

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-186600

DATE: September 29, 1976

MATTER OF: Chrysler Motors Corporation

## DIGEST:

Where agency notifies offeror, by telephone, of relaxation of solicitation requirements on the same day that best and final offers are due and only written evidence of conversation is ambiguous, GAO cannot conclude that offeror was given an equal opportunity to compete for contract.

Chrysler Motors Corporation (Chrysler) has timely protested to our Office following the rejection of its initial protest to the General Services Administration (GSA) against the awarding of a contract to AM General Corporation (AM General) for police patrol vans under request for proposals (RFP) No. FYPH-M5-A-5952-N-4-27-76.

Both the initial protest to the agency and the subsequent protest to this Office were grounded on Chrysler's assertion that GSA had materially varied a portion of the solicitation's requirements to its detriment and without its knowledge by reducing the gross vehicle weight (GVW) requirement for the patrol vans for 8,500 pounds to 8,000 pounds. GSA admits the reduction, but counters that Chrysler was informed by telephone of the change in the requirements on the morning of the day set for best and final offers.

AM General, one of the two offerors, submitted an offer which lowered the GVW of the patrol vans from the 8,500 pounds specified to 8,000 pounds. The protester's offer was premised upon an 8,500-pound vehicle. Upon receipt of initial proposals, GSA notified the user, the Immigration and Naturalization Service (INS), of the sum and substance of the two proposals received including the fact that AM General had offered an 8,000-pound vehicle in lieu of a 8,500-pound vehicle. INS was also advised of a "discrepancy between the funds committed and the actual bid prices received \* \* \*." INS decided, in light of the above, that an 8,000-pound vehicle would meet its minimum requirements. GSA states that on the next day, which also was the day set for best and final offers, it advised Chrysler by telephone of the relaxed requirement and that Chrysler declined to change its price. Chrysler denies ever receiving the information with respect to the relaxed requirements.

In support of its position GSA has submitted a copy of a "Contact Record" which was executed subsequent to the conversation by the GSA employee who made the phone call, as well as the sworn affidavit of the employee concerning the circumstances surrounding the phone conversation. However, Chrysler remains "firm" in insisting that it was "never advised of any change in specifications." It states that it substantiated this fact by examining the procedures used in formulating its best and final offer because a different procedure is followed when a request is made solely for a best and final offer than when the request for a best and final offer is coupled with a specification change. Based upon the record before us, we believe that it is likely that GSA did inform Chrysler of the weight change on the day best and final offers were due, but that the information either reached Chrysler in a garbled form or something happened within the Chrysler organization with the end result that the information was not acted upon.

GSA has taken the position that its course of conduct has been governed by and in compliance with Federal Procurement Regulations 1-3.805-1(d) (1964 ed.) which reads as follows:

"(d) When, during negotiations, a substantial change occurs in the Government's requirements or a decision is reached to relax, increase, or otherwise modify the scope of the work or statement of requirements, such change or modification shall be made in writing as an amendment to the request for proposals, and a copy shall be furnished to each prospective contractor. Oral advice of change or modification may be given if (1) the changes involved are not complex in nature, (2) all prospective contractors are notified simultaneously (preferably by a meeting with the contracting officer), and (3) a record is made of the oral advice given. In such instances, however, the oral advice should be promptly followed by a written amendment verifying such oral advice previously given. The dissemination of oral advice of changes or modifications separately to each prospective contractor during individual negotiation sessions should be avoided unless preceded, accompanied, or immediately

followed by a written amendment to the request for proposals embodying such changes or modifications." (Emphasis added)

Emphasizing the portion of the regulation dealing with oral advice, underscored above, GSA argues that the change it made in the GVW requirement was not complex in nature, that there was "almost simultaneous" notification, and that the aforementioned contact record constitutes a sufficient record of the transaction. We note, however, that there is no indication that the oral advice was followed by the required written amendment verifying the oral advice which was given. This requirement in itself tends to indicate that the drafters of the regulation expected that there would be sufficient time between the oral advice and the time that a recipient was required to act upon such advice as to allow a confirming document to reach the recipient. Chrysler challenges GSA's assumption that the change in gross vehicle weight was not of a complex nature by pointing out that its significance was such as to require:

"\* \* \* the bidding of an entirely different vehicle, i.e., the 8,500 GVW vehicle being nominally rated at one ton and the 8,000 pound vehicle having a three-quarter ton rating."

It is also noteworthy that the notification was of a sequential rather than a simultaneous nature with AM General being notified first and Chrysler second. In addition, the record which was made of the notification is ambiguous, reading as follows:

"\* \* \* Chrysler Corp--stated their original offer represents their best and final prices at this time. AM General's exception to the GVW requirement was also communicated to Chrysler, but Chrysler declined to change their price."

It is not clear from the above text that Chrysler was told that GSA had relaxed the GVW requirement. It is only clear that GSA told Chrysler that another offeror had taken exception to the GVW requirement. We doubt whether this information alone was sufficient to place Chrysler on notice that GSA was now in the market for a three-quarter ton truck in place of the one-ton truck originally sought.

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This Office observed, in a case dealing with Armed Services Procurement Regulation § 3-805.1(e) (1969 ed.) (the counterpart of the aforementioned FPR § 1-3.805-1(d)), that:

"\* \* \* The benefits to be derived from issuance of a written amendment are evident. The procurement officials of the agency are assured that notice of the complete change is in fact communicated to the proper officials of all competitive offerors and that all the aspects of the change referenced to the applicable RFP provisions are included in the notice. The possibility of charges of fraud or favoritism is thereby eliminated or reduced. Also, the written amendment and acknowledgement of its receipt provide a firm basis for reviewing and justifying a challenged procurement action. Moreover, the Government is assured that the resulting contract, as a legal document, will embody the new changed terms rather than the old terms." 49 Comp. Gen. 156, 162 (1969).

On this record we cannot conclude that Chrysler was given an equal opportunity to compete for the contract. Although we normally would recommend that the contract be terminated for the convenience of the Government, we have been advised that termination costs totaling \$151,156 would be incurred. The agency report also indicates that INS has a critical need for the police vans to the extent that their "prompt delivery is a matter of public exigency." We therefore conclude that termination of AM General's contract would not be in the best interests of the Government. Nevertheless we are by letter of today recommending to the Administrator of GSA that such steps as are necessary should be taken to preclude a reoccurrence of this situation.

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of the United States